



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN 19 2006

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Dave Roderick  
Vice President of Refining  
Wynnewood Refining Company  
P.O. Box 305  
906 South Powell  
Wynnewood, Oklahoma 73098

Re: Fuel Waiver for Diesel and Gasoline Sulfur

Dear Mr. Roderick:

This is in response to your May 17, 2006 and May 31, 2006 letters in which you request, on behalf of Wynnewood Refining Company (Wynnewood), that the United States Environmental Protection Agency (EPA) waive, pursuant to 40 C.F.R. § 80.561, certain ultra low sulfur diesel fuel (ULSD) requirements under 40 C.F.R. §§ 80.552(c), 80.553 and 80.554(d). This waiver request concerns the Wynnewood refinery located in Wynnewood, Oklahoma, that produces diesel fuel for use in the State of Oklahoma.

Wynnewood is a small refiner, as defined by 40 C.F.R. § 80.550, and has been approved by EPA for motor vehicle diesel fuel and nonroad diesel fuel small refiner relief under the ULSD regulations. Wynnewood has opted, under 40 C.F.R. §§ 80.552(c), 80.553 and 80.554(d), to meet certain ULSD requirements that are more stringent than otherwise would apply, in exchange for receiving additional time to meet certain gasoline sulfur standards (the "gasoline-for-diesel options" under the motor vehicle diesel fuel and nonroad diesel fuel regulations). Under these options, a small refiner receives three additional years, through 2010, to produce gasoline that meets the less-stringent small refiner sulfur standard, provided that the refiner's motor vehicle and nonroad diesel fuel production meets certain requirements. One such requirement is that for each compliance period at least 95% of the refinery's diesel fuel produced for use in motor vehicles, nonroad equipment, locomotives and marine engines must meet the 15 parts per million ULSD standard, starting June 1, 2006.

Your letters of May 17<sup>th</sup> and 31<sup>st</sup> request that EPA waive the requirement that Wynnewood must produce 95% of its diesel fuel produced for use in motor vehicles, nonroad equipment, locomotives and marine engines as ULSD during the June 1, 2006, through June 30, 2007 compliance period (the 2006-2007 compliance period) in order to remain eligible for the gasoline-for-diesel option. Your letter states that Wynnewood may not be able to begin

producing diesel fuel meeting the ULSD standard until August 1, 2006, and that this delay could prevent Wynnewood from meeting the 95% ULSD production requirement for the 2006-2007 compliance period. As a consequence, absent a waiver, Wynnewood may not remain eligible for the gasoline-for-diesel options unless it produces no, or a significantly reduced volume of, motor vehicle, nonroad, locomotive and marine diesel fuel during June and July, 2006. According to your letters, Wynnewood supplies a substantial portion of the diesel fuel used in certain parts of Oklahoma, so that such a curtailment in the production of motor vehicle, nonroad, locomotive and marine diesel fuel by Wynnewood could result in shortages of nonroad diesel fuel in these areas. Inability to produce diesel fuel could also lead to an extended shutdown of the refinery, impacting supplies of gasoline, jet fuel and other products in the area.

EPA recognizes the environmental benefits of ULSD. However, pursuant to 40 C.F.R. § 80.561, and subject to the conditions and limitations contained in this letter, EPA today is waiving the requirements, under 40 C.F.R. § 80.553(d) and 40 C.F.R. § 80.554(d), that 95% of the diesel fuel produced by Wynnewood at its Wynnewood, Oklahoma refinery for use in motor vehicles, nonroad equipment, locomotives and marine engines must meet the ULSD standard during the 2006-2007 compliance period in order to remain eligible for the gasoline-for-diesel option. This waiver is based on information provided by Wynnewood and the following EPA findings.

- As a result of a major refinery fire, which is an extreme, unusual and unforeseen circumstance that was outside the control of Wynnewood, and despite exercising prudent planning, diligence and due care, Wynnewood will not be able to meet the ULSD requirements by June 1, 2006, at its Wynnewood, Oklahoma refinery. Furthermore, Wynnewood has taken all reasonable steps to minimize this delay.
- EPA believes that unless this waiver is granted a nonroad diesel fuel supply shortage may occur in the State of Oklahoma. Therefore, it is in the public interest to grant this waiver.
- Wynnewood has demonstrated that the requirements for motor vehicle diesel fuel and nonroad, locomotive and marine diesel fuel will be expeditiously achieved.
- Wynnewood has agreed to make up any air quality detriment resulting from this waiver.
- Based on Wynnewood's representations regarding the increased expenses necessary to produce ULSD that result from the effects of the fire on the cost of equipment and labor, and the expenses of making up any air quality detriment associated with this waiver, Wynnewood will not receive an economic benefit from this waiver.

This waiver is subject to the following conditions and limitations, all of which apply to Wynnewood's refinery in Wynnewood, Oklahoma.

1. Wynnewood shall continue to make all reasonable efforts to produce diesel fuel meeting the ULSD standard as soon as possible after June 1, 2006. It shall produce ULSD no later than by August 1, 2006.

2. Wynnewood shall produce 95% of its motor vehicle diesel fuel, and shall make all reasonable efforts to produce 95% of its nonroad, locomotive and marine diesel fuel to meet the ULSD standard during the 2006-2007 compliance period, but in no event shall the nonroad, locomotive and marine percentage be less than 79%. Moreover, if Wynnewood is unable to comply with the 95% ULSD production requirements for nonroad, locomotive and marine diesel fuel during this compliance period, it must use credits, as provided in Paragraph 4, to offset the difference between the volume of diesel fuel actually produced to meet the ULSD standard in the nonroad, locomotive and marine diesel fuel category and the volume necessary to meet the 95% ULSD requirement for that category.

3. Wynnewood shall comply with the requirement of 40 C.F.R. § 80.554(d) that the volume of diesel fuel produced for use in motor vehicles, nonroad equipment, locomotives and marine engines during the 2006-2007 compliance period shall be at least 85% of its motor vehicle, nonroad, locomotive and marine diesel fuel baseline under § 80.553; except that if it is unable to comply with this requirement, it may use credits as provided in Paragraph 4 to offset the lack of production, if any, during the period June 1, 2006 through July 31, 2006.

4. Wynnewood shall purchase and retire sufficient diesel credits, generated under 40 C.F.R. § 80.531, to offset the deficit of ULSD, if any, under 40 C.F.R. § 80.554 resulting from this waiver. These credits must be purchased from within Credit Trading Area 2 as defined in 40 C.F.R. § 80.531, except that early diesel credits may be purchased from any Credit Trading Area. These credits must be generated during the 2006-2007 compliance period, if possible, and not later than the July 1, 2007 through June 30, 2008 compliance period (the 2007-2008 compliance period). Credits from the 2007-2008 compliance period shall be discounted at the rate of two credits retired for each credit of deficit.

5. If the Wynnewood refinery produces any motor vehicle diesel fuel having a sulfur content greater than 15 ppm prior to August 1, 2006, Wynnewood shall take all steps necessary to assure that each truck loading terminal storage tank that contains any motor vehicle diesel fuel produced by Wynnewood meets the ULSD standard by September 1, 2006, by sampling and testing the diesel fuel contained in each such storage tank and implementing any additional ULSD transition measures necessary to achieve this requirement.

6. Wynnewood shall take steps to assure that, beginning June 1, 2006, the labeling requirements of 40 C.F.R. § 80.570(b) are met with regard to any motor vehicle diesel fuel produced by Wynnewood that does not meet the ULSD standard.

7. Wynnewood shall submit reports to EPA demonstrating compliance with the requirements of this waiver as follows: no later than December 1, 2006, with the requirements of Paragraphs 5 and 6; no later than August 1, 2007, with the requirements of Paragraphs 1 through 3 and the requirements related to 2006-2007 credits of Paragraph 4; and no later than August 1, 2008 with the requirements related to 2007-2008 credits of Paragraph 4. These reports shall be sent by overnight delivery service to the following address:

Adam M. Kushner, Director  
Air Enforcement Division  
Ariel Rios Federal Building South, Room 1119  
Mail Code 2242A  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

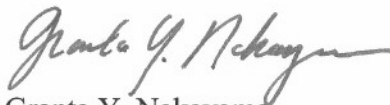
If Wynnewood fails to comply with the terms and conditions of this waiver it shall be void *ab initio* and Wynnewood will be subject to penalties for any violations 40 C.F.R. Part 80, Subparts H and I that it commits.

This waiver is conditional upon the truthfulness, accuracy and completeness of Wynnewood's disclosures and representations to EPA, including but not limited to the representations made in the May 17, 2006 and the May 31, 2006 letters.

This waiver does not preclude any action by EPA to address past or future violations of the Clean Air Act or regulations promulgated thereunder that are unrelated to this waiver.

If you have questions, please contact Adam Kushner or my staff at 202-564-7979.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator